

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. A municipal corporation is entitled to the same fair consideration as a private individual. All persons and municipal corporations stand equal before the law and are to be dealt with as equals in a court of justice.

In determining the facts of this case, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

Certain things are not evidence. I will list them for you.

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside of the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports that you may have seen or heard.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

Some of you may have heard the phrases “direct” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence. In other words, it is proof of one or more facts that point to the existence or non-existence of another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things: the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things that the witness testified about, the witness's memory; any interest, bias or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness's testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness's testimony in whole, in part, or not at all, and how much weight to give to that testimony.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

In a civil lawsuit like this one, the burden is on the plaintiff to prove every essential element of his or her claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each essential element of the plaintiff’s claim by a preponderance of the evidence, then you should find for the plaintiff as to that claim.

If the proof fails to establish any essential element of the plaintiff’s claim by a preponderance of the evidence as to any particular defendant, then you should find for that defendant as to that claim.

When I use the expression "proximate cause," I mean that cause which, in natural or probable sequence, produced the injury complained of. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the injury.

You must give separate consideration to each claim and each party. In doing so, you must analyze what the evidence in the case shows with respect to each claim and party, leaving out of consideration any evidence admitted solely in regard to some other party. Each party is entitled to have the case decided on the evidence and the law applicable to that party.

In this case, Plaintiff Lee Thompson, as Independent Administrator of the Estate of the decedent James Thompson, has asserted claims both under federal law and the statutory law of Illinois. You must consider each of these claims separately.

First, Plaintiff claims that Defendant Bradley Hespe used excessive force against James Thompson, and therefore deprived him of his constitutional right to be free from unreasonable seizures.

Second, Plaintiff claims that Defendant Bradley Hespe's willful and wanton conduct against James Thompson caused him injuries in violation of the Illinois Wrongful Death Act and the Illinois Survival Act.

The Defendants deny all of these claims.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. With respect to a claim of excessive force, the standard that applies is reasonableness under the circumstances existing at the moment.

The reasonableness inquiry in an excessive force case is an objective one: the question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting him.

In order to find a Defendant liable, you must find that he was personally involved in the conduct complained of by the Plaintiff or expressly defined in these instructions. You may not hold a Defendant liable for the acts or omissions of any other persons.

When I use the expression “willful and wanton conduct” I mean a course of action which shows actual or deliberate intention to harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others.

A person is not authorized to use force to resist an arrest which he knows is being made by a peace officer, even if he believes that the arrest is unlawful.

A peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest.

With respect to Plaintiff's Wrongful Death Act and Survival Act claims, Defendant Bradley Hespe and the City of Chicago are sued as principal and agent. The City of Chicago is the principal and Bradley Hespe is its agent. If you find that Defendant Hespe is liable to Plaintiff on the Wrongful Death Act and Survival Act claims, then you must find that the Defendant City of Chicago is also liable on that claim. However, if you find that Defendant Hespe is not liable to plaintiff on the Wrongful Death Act and Survival Act claims, then you must find that Defendant City of Chicago is not liable.

Defendant City of Chicago may only be held liable for the acts of Defendant Hespe and may not be held liable for the acts or omissions of any other persons.

If the Plaintiff has proven any of her claims against the Defendants by a preponderance of the evidence, you must determine the damages to which the Plaintiff is entitled. You should not interpret the fact that I have given instructions about the Plaintiff's damages as an indication in any way that I believe that the Plaintiff should, or should not, win this case. It is your task first to decide whether the Defendants are liable. I am instructing you on damages only so that you will have guidance in the event you decide that the Defendants are liable and that the Plaintiff is entitled to recover money from the Defendants.

If you find that the Defendants are liable to Plaintiff, then you must determine an amount that is fair compensation for all of the Plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the Plaintiff whole—that is, to compensate the Plaintiff for the damages that the Plaintiff has suffered.

You may award compensatory damages only for injuries that the Plaintiff proves were proximately caused by the Defendants' allegedly wrongful conduct. The damages that you award must be fair compensation for all of the Plaintiff's damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the Defendants. You should not award compensatory damages for speculative injuries, but only for those injuries which the Plaintiff has actually suffered or that the Plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the Plaintiff prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence:

- decedent James Thompson's pain and suffering
- decedent James Thompson's widow's loss of society

You must not award compensatory damages more than once for the same injury. For example, if the Plaintiff prevails on two claims and establishes a dollar amount for her injuries, you must not award her any additional compensatory damages on each claim. The Plaintiff is only entitled to be made whole once, and may not recover more than she has lost. Of course, if different injuries are attributed to separate claims, then you must compensate the Plaintiff fully for all of her injuries.

As to Plaintiff's Wrongful Death Act claim, if you decide for the Plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the widow of the decedent James Thompson for the pecuniary loss proved by the evidence to have resulted to the widow from the death of the decedent James Thompson. "Pecuniary loss" may include loss of money, goods, services, and society.

Where a decedent leaves a widow, the law recognizes a presumption that the widow has sustained some substantial pecuniary loss by reason of the death. The weight to be given this presumption is for you to decide from the evidence in this case.

In determining pecuniary loss, you may consider what the evidence shows concerning the following:

1. What money, benefits, goods and services the decedent customarily contributed in the past;
2. What money, benefits, goods and services the decedent was likely to have contributed in the future;
3. Decedent's personal expenses and other deductions;
4. His age;
5. His sex;
6. His health;
7. His habits of industry, sobriety, and thrift;
8. His occupational abilities;
9. The marital relationship that existed between the widow and decedent.

With respect to Plaintiff's Wrongful Death Act and Survival Act claims, the Plaintiff Lee Thompson brings this action in a representative capacity by reason of her being administrator of the estate of the decedent James Thompson. She represents Paulette White-Thompson, the next of kin of the decedent James Thompson, and the estate of the decedent James Thompson.

Paulette White-Thompson is the real party in interest in this lawsuit, and in that sense is the real Plaintiff whose damages you are to determine if you decide for the administrator of the estate of James Thompson on Plaintiffs' Wrongful Death Act and Survival Act claims.

When I use the term “society” in these instructions, I mean the mutual benefits that each family member receives from the other’s continued existence, including love, affection, care, attention, companionship, comfort, guidance and protection.

It was the duty of James Thompson, before and at the time of the occurrence, to use ordinary care for his own safety. A plaintiff is contributorily negligent if:

1. He fails to use ordinary care for his own safety; and
2. His failure to use such ordinary care was a proximate cause of his death.

When I use the expression “contributory negligence,” I mean negligence on the part of the decedent that proximately contributed to cause his injury. When I use the expression “contributory willful and wanton conduct,” I mean willful and wanton conduct on the part of the decedent that proximately contributed to cause his injury.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

In determining damages under Plaintiff's Wrongful Death Act and Survival Act claims, you may not consider the grief and sorrow of the widow, Paulette White-Thompson.

With respect to Plaintiff's excessive force claim, your verdict must be for Plaintiff and against Defendant Bradley Hespe, if you find that Plaintiff proved all the following elements by a preponderance of the evidence:

First, Defendant placed James Thompson in a choke hold in the act of placing James Thompson in custody, and

Second, the use of such force was excessive because it was not reasonably necessary to take James Thompson into custody, and

Third, as a direct result, Plaintiff was damaged.

In determining whether such force was "not reasonably necessary," you must consider such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether a reasonable officer on the scene, without the benefit of 20/20 hindsight, would have used such force under similar circumstances.

If you find from your consideration of all the evidence that each of these propositions has been proved by a preponderance of the evidence, then your verdict must be for the Plaintiff on that claim. You should use Verdict Form A.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved by a preponderance of the evidence, then your verdict must be for the Defendant on that claim. You should use Verdict Form B.

It was the duty of the Defendant, under Plaintiff's Wrongful Death Act and Survival Act claims, before and at the time of the occurrence, to refrain from willful and wanton conduct which would endanger the safety of the decedent James Thompson.

Under Plaintiff's Wrongful Death Act and Survival Act claims, the Plaintiff claims that she was injured and sustained damage, and that the Defendants were willful and wanton in one or more of the following respects:

- a.       Placing James Thompson in a choke hold under the circumstances which presented no threat of harm to Defendant or others.
- b.       Restrained James Thompson in a manner so as to deprive him of oxygen for an extended period of time.
- c.       Used deadly force against James Thompson under circumstances which presented no threat of death or serious bodily harm to Defendant or others.

The Plaintiff further claims that one or more of the foregoing was a proximate cause of her injuries.

The Defendants deny that they did any of the things claimed by the Plaintiff, deny that they were willful and wanton, and deny that any claimed act or omission on the part of the Defendants were a proximate cause of the Plaintiff's claimed injuries.

If you decide for the Plaintiff on the question of liability as to Plaintiff's Survival Act claim, you must then fix the amount of money which will reasonably and fairly compensate the estate for any of the following elements of damages proved by the evidence to have resulted from the wrongful conduct of the Defendant during the period between the time of the decedent's injuries and the time of his death, taking into consideration the nature, extent, and duration of the injury:

The decedent's pain and suffering.

Whether any of these elements of damages has been proved by the evidence is for you to determine.

\_\_\_\_If you find for the Plaintiff as to Plaintiff's Wrongful Death Act claim, then in assessing damages you may consider how long Paulette White-Thompson will be likely to sustain damages due to loss of society as a result of James Thompson's death, considering how long James Thompson was likely to have lived and how long Paulette White-Thompson is likely to live.

According to the table of mortality in evidence, the expectancy of a male person aged 32 years is 42.8 years. That of a female person aged 29 years is 51.1 years. These figures are not conclusive. They are the average life expectancies of persons who have reached those ages. They may be considered by you in connection with other evidence relating to the probable life expectancies of the decedent and his widow including evidence of the decedent's occupation, health, habits and activities, bearing in mind that some persons live longer and some persons live less than the average.

In order to prevail on her Wrongful Death Act and Survival Act claims, the Plaintiff has the burden of proving each of the following propositions.

First, that the Defendant acted or failed to act in one of the ways claimed by the Plaintiff as stated to you in these instructions and that in so acting, or failing to act, the Defendant was willful and wanton.

Second, that the decedent James Thompson was injured.

Third, that the willful and wanton conduct of the Defendant was a proximate cause of the injury to the decedent James Thompson.

If you find from your consideration of all the evidence that any of these propositions (First, Second, and Third) has not been proved by the Plaintiff, then your verdict should be for the Defendant as to Plaintiff's Wrongful Death Act and Survival Act claims and you should use Verdict Form H. But if, on the other hand, you find from your consideration of all the evidence that all the propositions (First, Second, and Third) have been proved by the Plaintiff, then you must next consider the Defendant's claims that the decedent James Thompson was contributorily negligent and that the decedent James Thompson was contributorily willful and wanton.

In considering the Defendant's claims, you must first decide from the evidence whether Defendant's willful and wanton actions, if any, showed actual or deliberate intention to cause harm, or whether Defendant's willful and wanton actions, if any, showed utter indifference or conscious disregard for the safety of James Thompson.

If you find based on all the evidence that the Defendant's actions showed an actual or deliberate intention to cause harm, you should consider whether James Thompson contributed to his death through his own willful and wanton actions, if any.

If, on the other hand, you find based on all the evidence that the Defendant's actions showed

an utter indifference to or conscious disregard for the safety of James Thompson, then you should consider whether James Thompson contributed to his death through his own negligence, if any, and whether James Thompson contributed to his death through his own willful and wanton actions, if any.

As to the Defendant's claims that James Thompson was contributorily negligent and that James Thompson was contributorily willful and wanton, the Defendant has the burden of proving each of the following propositions:

A: That James Thompson acted or failed to act in one of the ways claimed by the Defendant as stated to you in these instructions and that in so acting, or failing to act, James Thompson was negligent or willful and wanton.

B: That James Thompson's negligent or willful and wanton conduct was a proximate cause of his death.

If you find from your consideration of all the evidence that the Plaintiff has proved all of the propositions required of her (First, Second, and Third) as to her Wrongful Death Act and Survival Act claims, and if you further find from your consideration of all the evidence that either of the propositions required of the Defendant have not been proved, then your verdict should be for the Plaintiff, and you should not reduce the Plaintiff's damages. You should use Verdict Form C.

If you find from your consideration of all the evidence that the Plaintiff has proved all of the propositions required of her (First, Second, and Third) as to her Wrongful Death Act and Survival Act claims, and if you further find from your consideration of all the evidence that the Defendant has proved both of the propositions required of the Defendant (A and B) and that Defendant's willful and wanton actions, if any, showed actual or deliberate intention to cause

harm, then you must consider whether James Thompson contributed to his death through his own willful and wanton actions, if any. If you find that James Thompson's willful and wanton conduct was greater than 50% of the total proximate cause of his death, then your verdict should be for the Defendant, and the Plaintiff is entitled to no damages. You should use Verdict Form D. But if, on the other hand, you find that James Thompson's willful and wanton conduct was 50% or less of the total proximate cause of his death, then your verdict should be for the Plaintiff and you should reduce Plaintiff's damages in proportion to James Thompson's contributory willful and wanton conduct. You should use Verdict Form E.

If you find from your consideration of all the evidence that the Plaintiff has proved all of the propositions required of her (First, Second, and Third) as to her Wrongful Death and Survival Act claims, and if you further find from your consideration of all the evidence that the Defendant has proved both of the propositions required of the Defendant (A and B) and that the Defendant's willful and wanton actions, if any, showed an utter indifference to or conscious disregard for the safety of James Thompson, then you must consider whether James Thompson contributed to his death through his own negligence, if any, and whether James Thompson contributed to his death through his own willful and wanton actions, if any. If you find that James Thompson's negligence and/or willful and wanton conduct was greater than 50% of the total proximate cause of his death, then your verdict should be for the Defendant, and the Plaintiff is entitled to no damages. You should use Verdict Form F. But if, on the other hand, you find that James Thompson's negligence and/or willful and wanton conduct was 50% or less of the total proximate cause of his death, then your verdict should be for the Plaintiff and you should reduce Plaintiff's damages in proportion to James Thompson's contributory negligence or contributory willful and wanton conduct. You should use Verdict Form G.

Under Plaintiff's Wrongful Death Act and Survival Act claims, the Defendant claims that the decedent James Thompson was contributorily negligent or contributorily willful and wanton in one or more of the following respects:

- a. Taking heroin on the evening of December 5, 2000 that impaired his judgment and that affected his health;
- b. Recklessly driving including, fleeing from the police, driving on the sidewalk and speeding; or
- c. Fighting with the police.

The Defendant further claims that one or more of the foregoing was a proximate cause of the decedent's injuries. The Plaintiff denies that the decedent was negligent or willful and wanton and denies that any claimed act or omission on the decedent's part was a proximate cause of the decedent's injuries.

In order to recover damages for the decedent's pain and suffering before his death, the Plaintiff must prove that the decedent James Thompson actually and consciously suffered pain after his injury and before his death.

If you decide for the Plaintiff on the question of liability, you may not deny or limit the Plaintiff's right to damages resulting from this occurrence because any injury resulted from a pre-existing condition which rendered the decedent James Thompson more susceptible to injury.